

**California Institution for Women**

16756 Chino-Corona Road  
Corona, CA 92880  
(909) 597-1771

**NOTICE OF ADVERSE ACTION**

Name of Employee: Stephen Merrill  
Civil Service Classification: Correctional Officer  
Department: Corrections and Rehabilitation  
Work Location: California Institution for Women  
16756 Chino-Corona Road  
Corona, CA 92880

TO: CORRECTIONAL OFFICER STEPHEN MERRILL

*Please note that the subject is a Correctional Peace Officer and his/her home address must be kept confidential. (Penal Code Section 146e(a).)*

You are hereby notified that, pursuant to Government Code §19574, adverse action is being taken against you as follows:

I  
**STATEMENT OF THE NATURE OF THE ADVERSE ACTION**

You are hereby notified you shall be dismissed from your position as a Correctional Officer with the California Department of Corrections and Rehabilitation (CDCR).

II  
**EFFECTIVE DATE OF THIS ADVERSE ACTION**

This dismissal shall be effective at the close of business on May 2, 2018.

III  
**STATEMENT OF CAUSES**

This adverse action is being taken against you for the causes set forth in the following subsections of Government Code §19572:



(I) Immorality

[Redacted]

The facts which underlie the legal causes for this adverse action are set forth with more particularity herein, below.

### GOVERNING POLICIES

Your actions violated the following sections of the California Code of Regulations (CCR):

**TITLE 2, §172, General Qualifications**, which states in pertinent part:

All candidates for, appointees to, and employees in state civil service shall possess the general qualifications of integrity, honesty, sobriety, dependability, industry, thoroughness, accuracy, good judgment, initiative, resourcefulness, courtesy, ability to work cooperatively with others, willingness and ability to assume the responsibilities and to conform to the conditions of work characteristic of the employment, and a state of health, consistent with the ability to perform the assigned duties of the class. The foregoing general qualifications shall be deemed to be a part of the personal characteristics of the minimum qualifications of each class specification.

**TITLE 15, §3391, Employee Conduct**, which states in pertinent part:

Employees shall be alert, courteous, and professional in their dealings with inmates, parolees, fellow employees, visitors and members of the public. Irresponsible or unethical conduct reflecting discredit on themselves or the department, either on or off duty, shall be avoided by all employees.

**TITLE 15, §3395, Alertness**, which states:

Employee must not sleep or be less than alert and in full possession of all faculties while on duty.

**TITLE 15, §3400, Familiarity**, which states:

Employees must not engage in undue familiarity with inmates, parolees, or the family and friend of inmates or parolees. Whenever there is a reason for an employee to have personal contact or discussions with an inmate or parolee or the family and friends of inmates and parolees, the employee must maintain a helpful but professional attitude and demeanor. Employees must not discuss their personal affairs with any inmate or parolee.

**TITLE 15, §3401.5, Employee Sexual Misconduct**, which states:

- (a) For the purposes of this section, sexual misconduct means any sexual behavior by a departmental employee, volunteer, agent or individual working on behalf of the CDCR, which involves or is directed toward an inmate or parolee. **The legal concept of "consent" does not exist between departmental staff and inmates/parolee;** any sexual behavior between them constitutes sexual misconduct and shall subject the employee to disciplinary action and/or to prosecution under the law. Sexual misconduct includes, but is not limited to:
- (1) Influencing or offering to influence an inmate's/parolee's safety, custody, housing, privileges, parole conditions or programming, or offering goods or services, in exchange for sexual favors; or
  - (2) Threatening an inmate's/parolee's safety, custody, housing, privileges, work detail, parole conditions or programming because the inmate/parolee has refused to engaged in sexual act(s) or contact, including:
  - (3) Engaging in sexual acts(s) or contact, including:
    - (A) Sexual intercourse; or
    - (B) Sodomy; or
    - (C) Oral Copulation; or
    - (D) Penetration of genital or anal openings by a foreign object, substance, instrument or device for the purpose of sexual arousal, gratifications, or manipulation; or
    - (E) Rubbing or touching of the breasts or sexual organs of another or of oneself, in the presence of and with knowledge of another, for the purpose of sexual arousal, gratification, or manipulation; or
    - (F) Invasion of privacy, beyond that reasonably necessary to maintain safety and security; or disrespectful, unduly familiar, or sexually threatening comments directed to, or within the hearing of an inmate/parolee.
- (b) Penalties. All allegations of sexual misconduct shall be subject to investigation, which may lead to disciplinary action and/or criminal prosecution.

Your actions violated the following sections of the Department Operations Manual (DOM):

**DOM, §54040.1, Prison Rape Elimination Policy -- Policy**, which states as follows:

"The California Department of Corrections and Rehabilitation (CDCR) is committed to providing a safe, humane, secure environment, free from offender on offender sexual violence, staff sexual misconduct, and sexual harassment. This will be accomplished by maintaining a program to address education/prevention, detection, response,

investigation, and tracking of these behaviors and to address successful community re-entry of the offender. CDCR shall maintain a zero tolerance for sexual violence, staff sexual misconduct and sexual harassment in its institutions, community correctional facilities, conservation camps, and for all offenders under its jurisdiction. All sexual violence, staff sexual misconduct, and sexual harassment is strictly prohibited. This policy applies to all offenders and persons employed by the CDCR, including volunteers and independent contractors assigned to an institution, community correctional facility, conservation camp, or parole..."

**DOM, §54040.3, *Prison Rape Elimination Policy -- Definitions*, which states as follows:**

**"Aggressor**

A person who attempts to commit, or commits sexual violence, staff sexual misconduct or sexual harassment.....

**Staff Sexual Misconduct**

Any threatened, coerced, attempted, or completed sexual contact, assault or battery between staff and offenders. Any sexual misconduct by staff directed toward an offender, as defined in California Code of Regulations (CCR), Title 15, Section 3401.5 and Penal Code (PC) Section 289.6. The legal concept of "consent" does not exist between staff and offenders; any sexual behavior between them constitutes sexual misconduct and shall subject the staff member to disciplinary action and/or to prosecution under the law.

**Staff**

Any person employed by the CDCR, including employees, volunteers, and independent contractors assigned to an institution, community correctional facility, conservation camp, parole, or headquarters. Employee refers to those individuals who are appointed through civil services employment laws and assigned to a CDCR institution.

**Victim**

For purposes of this policy, a victim is an offender who has been subjected to inmate sexual violence, staff sexual misconduct, or sexual harassment.

**DOM, §33030.3.1, *Code of Conduct*, which states:**

As employees and appointees of the Department, we are expected to perform our duties, at all times, as follows:

- Demonstrate professionalism, honesty, and integrity;
- Accept responsibility for our actions and their consequences;
- Treat fellow employees, inmates, wards, parolees, victims, their families, and the public with dignity and respect;

- Comply with all applicable laws and regulations;
- Report misconduct or any unethical or illegal activity and cooperate fully with any investigation.

**DOM, §33030.3.2, General Qualifications**, which states:

All employees are subject to the requirements as specified in the California Code of Regulations (CCR), Title 2, Section 172, General Qualifications, which states in pertinent part:

All candidates for, appointees to, and employees in the state civil service shall possess the general qualifications of integrity, honesty, sobriety, dependability, industry, thoroughness, accuracy, good judgment, initiative, resourcefulness, courtesy, ability to assume the responsibilities and to conform to the conditions of work characteristic of the employment, and a state of health, consistent with the ability to perform the assigned duties of the class.

**DOM, §33030.3.3, Law Enforcement Code of Ethics**, which states on pertinent part:

Peace officers employed by the Department are held to a higher standard of conduct on and off duty, as specified in the Law Enforcement Code of Ethics and the peace officer oath. The Law Enforcement Code of Ethics states, in pertinent part:

*As a law enforcement officer, my fundamental duty is to serve the community; to safeguard lives and property;...*

*I will keep my public and private life unsullied as an example to all and will behave in a manner that does not bring discredit to me or my Department. I WILL... develop self-restraint; and be constantly mindful of the welfare of others. Honest in thought and deed in both my personal and official life. I will be exemplary in obeying the law and the regulations of my department. ... I will ...cooperate with all legally authorized agencies and their representatives in the pursuit of justice.*

*I know that I alone am responsible for my own standard of professional performance and will take every reasonable opportunity to enhance and improve my level of knowledge and competence.*

*I recognize the badge of my office as a symbol of public faith, and I accept it as a public trust to be held so long as I am serving as a law enforcement officer. I will constantly strive to achieve these objectives and ideals, dedicating myself before all present to my chosen profession...law enforcement.*

IV

STATEMENT OF FACTS

A.

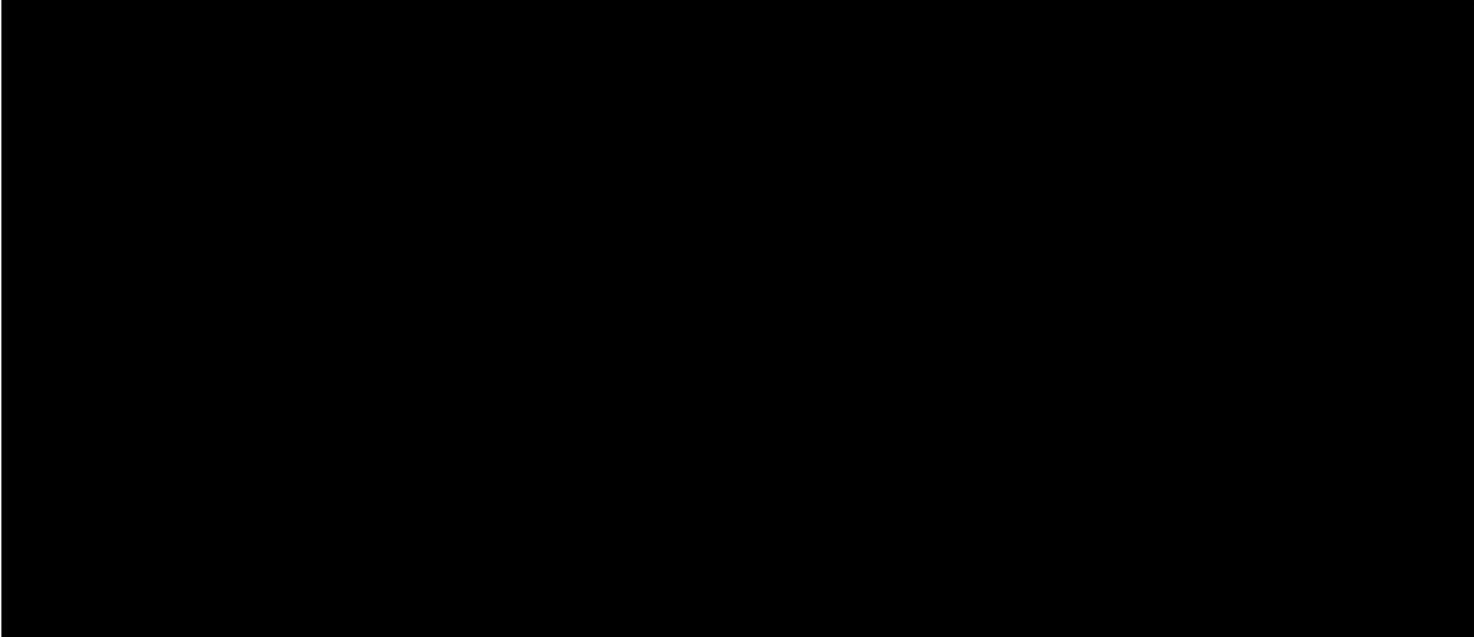
You have been employed with the Department from on or about March 24, 2014, to the present. You are currently employed at the California Institution for Women (CIW), as a Correctional Officer and were so employed during all relevant dates herein. You are fully aware of your responsibility to obey all laws, and to follow the policies and procedures of the Institution, as well as the rules and regulations of the Department. You are fully aware of your responsibility to act courteously, professionally and ethically in your dealing with staff, inmates and parolees, other agencies, and the public. As a sworn Peace Officer, you are held to a higher standard of conduct, on and off duty, and you are fully aware of this fact.

TRAINING

Further, you have taken the following training relevant to the above-mentioned allegations:

TRAINING COURSE	DATES
Prison Rape Elimination Act	03/01/15
Prison Rape Elimination Act	06/06/15
Prison Rape Elimination Act	07/25/15

B.



C.

**You Committed Sexual Misconduct with Inmates**

1. Under Title 15, Section 3401.5 The legal concept of "consent" does not exist between departmental staff and inmates/parolees; any sexual behavior between them constitutes sexual misconduct and shall subject the employee to disciplinary action and/or to prosecution under the law.
2. On or about October 29, 2017, you were assigned to work during the hours of 10:00pm to 6:00am. You reported to work at about 10:00pm, and you were assigned to [REDACTED]
3. On or about October 30, 2017, at approximately 3:30am, you entered Cell No. [REDACTED] which is occupied by Inmates [REDACTED]  
[REDACTED]
4. As Inmate [REDACTED] stood by the door facing the inside of the cell, she bent over and you inserted your right hand from behind her into her underwear. You grabbed her buttocks.
5. After removing your hand from her underwear, you tasted your fingers by placing them into your mouth.
6. Inmate [REDACTED] then faced the inside of the cell. She bent over with her buttocks facing you. You inserted your right hand into her underwear.
7. As a peace officer, you are held to a higher standard and your actions in this incident failed to meet the standard of conduct expected from peace officers. Your actions in the above-described incident demonstrate, without limitation, inexcusable neglect of duty, immorality, and other failure of good behavior causing discredit to the Department.

V

**NOTICE AND PROGRESSIVE DISCIPLINE**

None

VI  
APPEAL RIGHTS

**1. Right to Respond to Appointing Power.**

Pursuant to State Personnel Board Rule 52.6 (*Skelly Rule*), you are entitled to at least five (5) working days within which to respond to this proposed notice. You may respond orally or in writing prior to May 2, 2018. If you wish to respond you may do so to:

**Kyri Owens, Employee Relations Officer (A)**  
**California Institution for Women**  
**16756 Chino-Corona Road**  
**Corona, CA 92880**  
**(909) 606-4974**

You are entitled to a reasonable amount of State time to prepare your response to the charges. You are not entitled to a formal hearing with examination of witnesses at this stage of the proceedings. However, another may represent you in presenting your response. The appointing power may sustain, amend, modify, or revoke the proposed adverse action in whole or in part.

**2. Right to Appeal to the State Personnel Board.**

Regardless of whether you respond to these charges to the appointing power, you are advised that you have the right to file a written answer to this proposed notice with the State Personnel Board, 801 Capitol Mall, Sacramento, CA 95814, not later than thirty (30) calendar days after the effective date of this proposed action. An answer shall be deemed to be a request for hearing or investigation as provided in Section 19575 of the Government Code. If you answer as provided, the Board or its authorized representative shall, within a reasonable time, hold a hearing and shall notify the parties of the time and place thereof. If you fail to answer within the time specified, the adverse action taken by the appointing power shall become final.

You are responsible for notifying the State Personnel Board and your appointing power of any changes in your address that occur after the effective date of this adverse action.

**3. Right to Inspect Documents.**

Copies of any documents or other materials giving rise to this proposed adverse action are attached. This documentation is not being provided to the State Personnel Board in advance of any appeal hearing that may be scheduled.

Stephen Merrill, Correctional Officer  
Notice of Adverse Action  
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Date: 4 / 24 / 18

  
M. HILL  
Warden  
California Institution for Women

cc: Personnel Office  
Employee Relations Officer